IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

SUIT NO. 2589 OF 1986

M/s. Samrat Shipping Co. P. Ltd. ... Plaintiffs

V/s

Yking Metals & Alloys & ors. ... Defendants

Mr. Rahul Narichania i/by Motiwala & Co. for the plaintiffs.

None for the defendants.

CORAM: P.V. KAKADE, J.

DATED: 30TH AUGUST, 2004.

P.C.:

1. The plaintiffs have filed the suit against the defendants for recovery of the amount of Rs.1,77,229/- alongwith interest at the rate of 21% p.a. on principal amount of Rs.1,12,378.44 from the date of the suit till actual payment or realization.

2. The plaintiff Company was acting as Shipping Agents and certain consignment was brought to the Port of Bombay by the ship, of yellow brass scrap, to be discharged at the said Port. The 3rd defendants were the purchasers/consignees of the said consignment and

the relevant bill of lading in respect of the said consignment describe the third defendants as the "notified party". The third defendants have also endorsed the bill of lading. The third defendants intimated the plaintiffs that they have sold the said goods to the defendants 1 & 2 respectively and they would take the proportionate share of the contents of each of the said containers brought in the shipment. The plaintiffs further submitted that, in accordance with the practice of the steamer agents operating at the Port of Bombay, were entitled to and did charge for the services rendered to the owners of the cargoes of containers discharged from the said vessel. The plaintiffs have given detail calculations of the amount payable by the defendants which worked out to Rs.3,34,288.30, out of which the defendants have paid Rs.2,21,909.86. On 10.5.1983, the first defendants issued cheque drawn on Syndicate Bank in favour of the plaintiffs for an amount of Rs.30,608.17 towards part payment. Similarly, the 2nd defendants issued a cheque dated 11.5.1983 drawn on Dena Bank for the sum of Rs.30,408.77. The defendants promised to make the payment of the balance amount of Rs.51,361.50 in due course. Both the said cheques, when presented, were dishonoured and, therefore, the plaintiffs repeatedly

made demand for the said amount but in vain. Hence the suit is filed for recovery of the amount under dishonoured cheques as well as the balance amount from the defendants.

3. Defendants filed their written statement and denied the allegations made by the plaintiffs raising various contentions and sought dismissal of the suit.

4. Issue were settled on the basis of available pleadings of the parties. The settled issues are as under :-

(1) Whether the suit is barred by the law of limitation ?

(2) Whether the total charges payable to the plaintiffs aggregated to Rs.3,34,288.30 ?

(3) Whether the defendants promised the plaintiffs that they would make payment of Rs.51,361.50 ?

(4) Whether the 1st and 2nd defendants prove that they did not issue the cheques for

Rs.30,608.17 and Rs.30.408.77 as alleged by them ?

(5) Whether the 1st and 2nd defendants prove that the Central Bureau of Investigation is prosecuting the plaintiffs as alleged in paragraph 13(d) of the written statement of the 1st and 2nd defendants ?

(6) Whether the plaintiffs are entitled to a judgment and decree as against the defendants as prayed in the suit ?

(7) What order ?

My findings on the issues are as under :-

Issue No.1 :- Negative.
Issue No.2 :- Affirmative.
Issue No.3 :- Affirmative.
Issue No.4 :- Negative.
Issue No.5 :- Negative.
Issue No.6 :- Affirmative.
Issue No.7 :- As per final order below.

5. At the outset, it may be noted that the defendants have filed their written statement but remained absent at the time of hearing of the suit and hence the suit proceeded ex-parte against the defendants. Defendants did not produce any evidence whatsoever on record in rebuttal of the plaintiffs' claim. On the other hand, plaintiffs' witness entered the witness box and proved his affidavit of documents as well as compilation of documents which evidence is sufficient to support the claim made out in the plaint, especially when the entire evidence has gone unchallenged on record.

6. In the result, the plaintiffs succeed and are entitled for decree, hence the following order :-

O R D E R

The suit is hereby decreed with costs.

The defendants, jointly and severally, shall pay the amount of Rs.1,77,229/- to the plaintiffs alongwith interest at the rate of 12% p.a. on principal amount of Rs.1,12,378.44 from the date of the suit till actual payment or realization.

C. c. expedited.

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